

STATE OF MINNESOTA

FOURTH JUDICIAL DISTRICT COURT

COUNTY OF HENNEPIN

FIRST DIVISION, MINNEAPOLIS

Minneapolis Public Housing Authority,
in and for the City of Minneapolis,
a body politic and corporate,

Case No. UD-1970221508

Plaintiff/Landlord,

vs.

DECISION AND ORDER

/Tenant.

The above-entitled matter came on for hearing before the Honorable Linda J. Gallant, Housing Court Referee, on March 10, 1997.

Kenneth Parsons, Attorney at Law, Minneapolis Public Housing Authority, 1001 Washington Avenue North, Minneapolis, Minnesota 55401, appeared for and on behalf of the Plaintiff.

James A. Lee, Jr., Attorney at Law, Legal Aid Society of Minneapolis, Suite 300, 430 First Avenue North, Minneapolis, Minnesota 55401-1780, appeared for and on behalf of the Defendant, who was also present.

Based upon the arguments presented, and all the files, records, and proceedings, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. Plaintiff filed this case on February 21, 1997, alleging violation of Defendant's lease and of M.S.A.

273-a

§504.181, the general prohibition against drug possession. Plaintiff's eviction is based on its January 9, 1997, Notice to Defendant to vacate by January 15, 1997, due to "criminal drug activity." Complaint, ¶IX, and Notice, Exhibit B, p.2.

2. Plaintiff's earlier Unlawful Detainer case against Defendant was based on the same January 9, 1997, Notice to Vacate and on possession of drug paraphernalia. See Minneapolis Public Housing Authority v. _____ Co. UD-1970123530. The Court dismissed that case on February 19, 1997, based on the insufficiency of fact allegations in either the Complaint or the January 9, 1997, Notice to Terminate Lease.

3. Here, Plaintiff's Complaint alleges drug possession; the underlying January 9, 1997, Notice to Terminate alleges a seizure of "drug paraphernalia from your apartment." Exhibit B, Complaint. In essence, Plaintiff has renewed its request to evict in this case based on the same Notice of Termination upon which it relied in the earlier case.

4. In all evictions of public housing residents, the Minneapolis Public Housing Authority (MPHA) is required to give written notice of lease termination, which notice "shall state specific grounds for termination." 24 CFR §966.4(1)(3)(C)(ii). The January 9, 1997, Notice alleging possession of drug paraphernalia does not state the

"specific grounds for termination" now alleged, i.e. possession of a trace of marijuana and marijuana seeds weighing "0.00." The Termination Notice does not state the grounds alleged in the Complaint. For this reason, the Complaint must be dismissed.

5. Defendant moves to dismiss based on other grounds: claim preclusion, failure of Plaintiff to offer a grievance hearing to Defendant, and failure of the Notice to specify a basis of either "criminal activity" or "drug-related criminal activity" as required by federal regulation. 24 CFR §966(1)(3)(v)(c).

6. The Court has reviewed the City Chemist report dated January 14, 1997.

7. Defendant alleges failure by the MPHA to offer Defendant a grievance hearing. The MPHA is required to offer a grievance hearing in all evictions except evictions based on "drug-related criminal activity" or criminal activity that threatens the health or safety of others. 24 CFR §966.51(a)(2)(i). In this case, the factual allegations, if proven, constitute behavior that is a petty misdemeanor, i.e. possession of a trace of marijuana and weightless marijuana seeds. A petty misdemeanor is an activity prohibited by statute, but does not constitute a "crime." M.S.A. §609.02, Subd. 4a. By definition, then, the possession of a small amount of marijuana and weightless

marijuana seeds is not a "criminal activity" as that term is used in the parties' lease or in the applicable federal regulations. With the extremely limited evidence alleged here (a warrantless consensual search, the items seized, and no other allegations of "bad behavior"), the Court could not conclude that the Plaintiff's allegations, if proven, constitute either "drug-related criminal activity" or behavior constituting a threat to others. Plaintiff's claim that Defendant was not entitled to the opportunity for a grievance hearing (Complaint, ¶IX) must fail.

8. Plaintiff's January 9, 1997, Termination Notice states that it is based on "illegal drug activity." Federal regulations expressly require the MPHA to state whether the eviction is based on "criminal activity" or "drug-related criminal activity." 24 CFR §966.4(1)(3)(v)(C). The Plaintiff's phrase "illegal drug activity" only serves to confuse the issue. While the Court would not dismiss this case based solely on this factor, the Plaintiff's Complaint should follow the precise requirements of applicable federal law.

9. In two separate actions, the Plaintiff has brought an Unlawful Detainer to evict the Defendant. In both cases, Defendant has retained counsel, appeared in Court, and vigorously defended the claim. Defendant should not incur the adverse effects of two lawsuits, two Unlawful Detainer

cases on his public record, and two months of jeopardy of losing his residence. This Court is aware of the fact that the more Unlawful Detainer cases filed against a tenant, the more difficult it is for her/him to rent a new apartment, without regard to the Court's decision in the case. Weighing these adverse effects against the apparent strengths and weaknesses of the Plaintiff's case, the balancing weighs solely in Defendant's favor. The case should be dismissed with prejudice, lest the Defendant face the risk of a further Unlawful Detainer, further jeopardy of eviction, and further litigation.

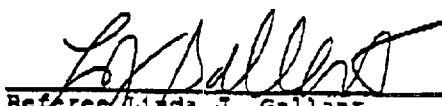
From the foregoing Findings of Fact and Conclusions of Law, the Court makes the following:

ORDER:

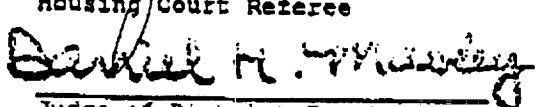
1. The Plaintiff's case is dismissed with prejudice, based on the inappropriateness of serial evictions.
2. The Plaintiff's case is further dismissed due to insufficiency of the Notice of Termination and failure to offer Defendant a grievance hearing, based on the pretrial review of the evidence.

RECOMMENDED BY:

Dated: March 26, 1997


Referee Linda J. Gallant
Housing Court Referee

Dated: March 26, 1997


Judge of District Court